

REMARKS

Claims 1-5 were presented for examination, and were rejected under 35 U.S.C. §103(a) based on the combination of English and Pinard (USP 6,580,700). Claims 1-4 are currently amended. Reconsideration is respectfully requested.

The Office has agreed that English does not disclose calculating an indication of available data rate based at least in-part on signal strengths and supported technology. However, the Office suggests that the newly cited reference, Pinard, does teach that feature. Applicant respectfully traverses. In the passage cited by the Office Pinard states that the probe response frame specifies supported rates, and this information is saved for roam algorithm decision making.¹ However, there is no indication that this information or the roam algorithm decision making is ever used to calculate an **indication of available data rate**. In fact, Pinard specifically states that RSSI and load leveling are used to determine which is the best AP for roaming purposes, and that the data rate information is simply used to remove non-2 MBits/second APs from eligibility.² As a result, Pinard does not calculate an indication of what data rate will actually be provided by an alternative AP based on technology, i.e., as opposed to the ideal data rate. The actual data rate will of course become known after roaming to that AP. In contrast, the presently claimed invention **calculates an indication of available data rate based on technology before making the roaming decision**. In other words, the wireless device estimates what data rate will be provided by that alternative AP, as opposed to using the maximum data rate that might be provided by the AP under ideal conditions. Different technologies are apt to perform differently under different conditions. For example, one

¹ Column 9, lines 18-24

² Column 7, lines 61-64

technology might perform better than another at close range, but relatively poorly at greater range. Similarly, some technologies penetrate walls and other obstructions better than others. The attention of the Office is directed to section 4.c.1 of the specification, beginning on page 53, and also to Fig. 32, for an explanation of how technology in the form of an IEEE 802.11 mode (e.g., a, b, g) can be used to calculate expected data rate.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned, Applicants' Attorney at 978-264-4001 so that such issues may be resolved as expeditiously as possible. For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

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Date

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